THE HON'BLE SRI JUSTICE K.C. BHANU

On Wednesday, the twenty fourth day of August

Two thousand and Five.

W.P.No.16110 of 2002

M.Sanni Babu, s/o Babu Rao, aged 45 years, Occ: Service, R/o Visakhapatnam.

……Petitioner

And

The Visakhapatnam Dock Labour Board, represented by its Chairman, Visakhapatnam and another. **…Respondents.**

O R D E R:

This writ petition is filed to quash the proceedings of the first respondent dated 31.1.2002 in Reference No.P.1/Dis.S.25/2002/508, which was confirmed by the 2nd respondent in proceedings dated 6.8.2002, as arbitrary and un-constitutional.

Before adverting to the question as to whether the impugned proceedings suffers from any legal infirmity requiring any interference as such by this Court, in exercise of its writ jurisdiction, it may be necessary, briefly, to note the relevant facts leading to the filing of this writ Petition. The writ petitioner is

working as Assistant Supervisor(Booking) in the respondents Board. The petitioner pleads that on 5.8.2000, when his mother was suffered from heart attack in the early hours, he took her to Visakhapatnam Dock Labour Board Hospital and thereafter he took her to Seven Hills Hospital where she died, and due to which he could not informed the competent authority in advance about his absence. Thereafter, the petitioner had faced enquiry wherein the 1st respondent awarded punishment for the petitioner by reduction of one stage of scale with cumulative effect for a period of three years. Against the said proceedings, the petitioner preferred an appeal before the 2nd respondent, on 20.2.2002, wherein the same was dismissed on 6.8.2002. Hence the petitioner filed the present writ petition.

The learned counsel for the petitioner contended that the writ petitioner could not inform the competent authority in advance in not attending the duties because of the circumstances beyond his control and it is not intentional or deliberate on his in not reporting the duty, and therefore, the punishment imposed by the disciplinary authority is disproportionate to the proved misconduct.

On the other hand, Mr. P.Raghuram, learned standing counsel appearing for the respondents contended that the duties of the petitioner are such that he has to distribute the work to all the employees and for not informing in time, it caused lot of inconvenience to the management, therefore, it is a misconduct and hence the proper punishment has been imposed.

There cannot be any dispute that it is for the disciplinary authority and on appeal the appellate authority are the fact-finding authorities to take appropriate decision in the disciplinary matters. When the findings are not based upon any evidence and findings are said to be vicious, then, certainly this court can interfere with the administrative decision. At the same time, when the punishment imposed by the disciplinary authority to the proved misconduct has been shorten to the conscience of the court, this Court can also impose the punishment.

It is contended by the learned counsel for the petitioner that because of misconduct of the petitioner, it caused great inconvenience to the management in order to make arrangement in allotting the work to the several workers, it may be a fact that the petitioner has not informed the competent authority in advance due to the reasoned fact that the mother of the petitioner was suffered from heart attack and he took her to Visakhapatnam Dock Labour Board Hospital and then to Seven Hills Hospital where she died and the said fact has not been disputed in this writ petition. So, the only contention of the learned standing counsel for the respondents is that the inconvenience caused to the Board though the circumstances are not beyond the control of the writ petitioner.

The petitioner might not have informed the competent authority in advance while proceeding on leave, but however, there is evidence on record that he being the responsible employee, the primary requirement is to give information in advance while proceeding on leave, but at the same time not informing the competent authority, caused dislocation of work, thereby, requesting the other shift Assistant Supervisor to continue the work. So it would be certainly cause inconvenience to the management due to the absence or not attending the work by the petitioner, cannot be said to be intention or wonton or deliberate, in view of the fact that the petitioner has to take his mother to the hospital when she was suffering with heart attack.

Therefore, in these circumstances, this court is of the opinion that the punishment imposed by the disciplinary authority is disproportionate to the proved misconduct and the department as a matter of right treating that particular day as leave, alleged the misconduct and also salary for that day was released.

So, in view of these facts and circumstances, this Court is of the opinion that the imposition of punishment by reduction of pay from Rs.8140/- to Rs.7970/- i.e. one stage for a period of three years with cumulative effect is modified to that of stoppage of one increment for a period of three years without cumulative

effect. The writ petition is accordingly allowed. No order as to costs.

JUSTICE K.C. BHANU

24th August 2005

BCS